

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-206364

**DATE:** August 23, 1982

**MATTER OF:** Management Services, Inc.

**DIGEST:**

1. Where Corporate Experience and Past Performance is one of four evaluation criteria, the fact that the high technical, low cost offeror has no corporate experience does not preclude award to that firm.
2. GAO will not dispute a contracting agency's determination as to the realism of the costs proposed for a cost reimbursement contract unless the determination is shown to be unreasonable.
3. GAO will not question a contracting agency's evaluation of technical proposals unless the protester shows that the agency's judgment was unreasonable, was an abuse of discretion, or violated procurement statutes or regulations.

Management Services, Inc. (MSI) protests the award of a contract by the National Aeronautics and Space Administration (NASA) to Wiltech Corporation under request for proposals (RFP) 10-2-0181-1. The contract, which was set aside for small business concerns, is for component refurbishment and chemical analysis support services at the Kennedy Space Center. MSI contends that Wiltech's proposal was evaluated improperly with respect to the corporate experience and the "Other Factors" evaluation criteria; that each firm's cost proposal was evaluated improperly; and that NASA misunderstood MSI's proposed award fee structure, a part of the technical proposal. MSI also requests reimbursement for the cost of preparing its proposal.

We deny the protest and the claim for proposal preparation costs.

The RFP specified four evaluation factors; Technical, Cost, Company Experience and Past Performance, and Other Factors. Only the Technical factor was to be weighted numerically and scored. The RFP explained that Company Experience and Past Performance involved the evaluation of overall corporate or offeror experience and past performance, as opposed to that of individuals who would be involved with the contract, which would be evaluated under "Key Personnel," a technical evaluation subfactor. The RFP listed nine Other Factors that NASA believed were relevant to the offeror's ability to meet the contract's requirements and objectives. Offerors were cautioned that although only technical factors were weighted, any of the other three could be the determining factor in the selection decision.

Wiltech and MSI (the incumbent) were the only firms that responded to the RFP. Wiltech received a substantially higher technical score than MSI did, and had a lower evaluated cost. Wiltech had no corporate experience, however; apparently, the firm's only corporate activity before this competition was to compete, unsuccessfully, against MSI in 1976 for the same services in issue here, and Wiltech has been dormant since that time. On the other hand, NASA found that MSI's experience was excellent. Finally, NASA found the two firms essentially equal with respect to Other Factors.

Since Wiltech was judged superior under two of the four evaluation factors (Technical and Cost), and Wiltech and MSI were judged equal under a third, NASA selected Wiltech for further negotiations and award.

Company Experience and Past Performance; Other Factors

MSI and NASA agree that the RFP's four evaluation factors were to be accorded equal weight. MSI contends, however, that in view of Wiltech's total lack of corporate experience the firm's proposal was impossible to evaluate under the relevant factor. MSI similarly argues that it is virtually impossible to evaluate Wiltech under the Other Factors criterion for the same reason.

According to MSI, it necessarily follows that instead of giving the Company Experience and Past Performance factor and Other Factors their due weight in evaluating proposals and selecting the awardse, NASA in effect improperly disregarded them. MSI argues that this is evidenced by the Source Selection Official's (SSO) statement that " \* \* \* I determined that this factor of Company Experience and Past Performance did not rank in weight with the technical evaluation and cost factors. I found no other factors bearing on the selection decision." MSI contends:

"it is evident that the procuring agency has in this case gone out of its way to minimize the importance of stated evaluation factors in which MSI excels, while restricting its consideration to only those factors in which it finds the Wiltech proposal to be superior."

NASA reports that the officials involved in proposal evaluation and the selection were well aware of Wiltech's lack of corporate experience. As a result NASA found MSI to be the superior offeror under that evaluation factor. NASA also points out that the RFP listed the following Other Factors:

- A. Financial Condition & Capability
- B. Stability of Work Force
  - 1. Company Personnel Policies
  - 2. Labor Management Relations
  - 3. Equal Employment Opportunity
- C. Subcontracting
- D. Joint Ventures
- E. Priority Placed by the Corporate Level of the Offeror on the Work Proposed
- F. Corporate Resources
- G. Acceptance of Contract Provisions

## H. Mobilization Plan

## I. Preliminary Quality Assurance Plan

NASA argues that there is no reason why such factors cannot be evaluated properly for a firm such as Wiltech. For example, NASA contends, "Financial Condition and Capability can be assessed if the firm can obtain an adequate line of credit to enable it to operate \* \* \* and Acceptance of Contract Provisions can be judged by reviewing proposal compliance with the RFP."

While we appreciate MSI's reading of the quoted SSO statement, NASA asserts, and we agree, that the statement must be viewed in the context of the entire evaluation process. The evaluation records clearly show that the Experience/Performance factor and Other Factors were neither impossible to evaluate nor "minimized" by the source evaluation board or the SSO. With respect to experience, the RFP did not require a particular level of corporate experience or performance but simply identified those matters as elements in proposal evaluation, that is, the factor was only one of a number of comparative elements used to judge competing proposals. Wiltech expressly stated its situation in its offer, its lack of experience was recognized and considered by the source evaluation board, and the board made it clear to the SSO. Similarly, the board recognized MSI's excellent record and reported it to the SSO; the record is clear that both the board and the SSO appreciated MSI's superiority under that evaluation factor. Experience/Performance was only one of four factors in the evaluation of the relative merits of proposals, however, and where an RFP lists a number of evaluation factors of equal importance, a single one cannot be accorded more than the weight prescribed in the evaluation scheme. See Mutual of Omaha Insurance Company, B-201720, January 4, 1982, 82-1 CPD 2 at p. 9.

With respect to Other Factors, we agree with NASA that Wiltech's lack of corporate experience need not preclude a reasoned evaluation of the nine subfactors listed. The record shows that NASA evaluated Wiltech and MSI under the subfactors and simply rated the two firms equal. We will not object to an agency's evaluation of proposals unless the protester shows

it to be unreasonable, Earth Environmental Consultants, Inc., B-204866, January 19, 1982, 82-1 CPD 43, and MSI simply has provided no substantive basis to suggest that NASA's conclusion was not reasonable.

Selection officials, faced with the results of the proper evaluation process, clearly have the discretion to trade off among evaluation factors as long as that trade-off is reasonable and consistent with the overall evaluation scheme. See The University Foundation, California State University, Chico, B-200608, January 30, 1981, 81-1 CPD 54. Here, MSI's rating under the experience factor was superior, and the two firms were considered equal under Other Factors. Also, Wiltech was rated substantially superior to MSI under the technical evaluation factor. Our review of the evaluation documents--the source evaluation board memoranda, the contracting officer's statements, the charts used by the board in its presentation to the SSO, and the SSO statement in its entirety (the only evaluation document furnished to MSI)--clearly shows that the selection of Wiltech reflected the board's and ultimately the SSO's judgment that under the circumstances the Government's needs would be best served by contracting with the lower cost, considerably superior technical firm, notwithstanding that firm's lack of corporate experience. We simply cannot conclude that NASA's selection of the superior technical offeror at the lowest cost available to the Government was unreasonable.

#### Wiltech's cost proposal

MSI contends that because the SSO allegedly minimized the importance of Corporate Experience and Other Factors, the SSO obviously relied on Wiltech's lower evaluated cost to an inordinate degree. MSI also contends that Wiltech's proposed costs were unrealistic in that (a) Wiltech proposed to use 89 employees to perform the contract while MSI believes that a minimum of 96 are needed; (b) some of Wiltech's employees will be "trainees," which MSI contends violates Department of Labor regulations and therefore will "have to be scrapped during performance--thereby increasing the cost substantially," and (c) NASA did not consider transition costs in evaluating the proposal as required by the RFP.

Initially, in view of our discussion above, we do not agree that NASA's selection of Wiltech reflected undue reliance on the firm's lower cost in relation to the other three evaluation factors.

We also note that the award of a cost-reimbursement contract requires the exercise of informed judgments as to whether costs proposed are realistic, and we have recognized that the contracting agency clearly is in the best position to make these judgments. See University Research Corporation, B-196246, January 29, 1981, 81-1 CPD 50. We therefore will not dispute an agency's conclusion that proposed costs for a cost type contract are realistic unless they are shown to be unreasonable. See Planning Research Corporation, B-205161, February 5, 1982, 82-1 CPD 98.

Regarding Wiltech's proposed manning cost, NASA reports that the source evaluation board recognized that Wiltech's proposal reflected a reduction from the incumbent's actual and proposed manning level but nonetheless concluded that the reduction was well-supported, although certain minor adjustments were necessary. In our view, the fact that MSI believes that 96 employees are required to meet NASA's needs does not in itself render unreasonable NASA's conclusion that Wiltech can fulfill the contract with fewer employees, and thus that the firm's proposed manning costs are realistic. See Hayes International Corporation, B-197003, June 5, 1980, 80-1 CPD 390.

MSI does not explain why Wiltech's proposed use of "trainees" violates Department of Labor regulations. NASA suggests that MSI's complaint is that Wiltech proposes to hire certain current MSI employees for "lesser" positions than they have with the incumbent, and thus at lesser pay. NASA states that it sees no impropriety in that proposal, but reports that there is an on-going investigation by the Department of Labor into the matter. NASA states:

"\* \* \* We have no plans to force Wiltech to scrap its staffing plan. If it turns out that Wiltech is required to 'conform' a few positions to a higher pay scale, the additional dollars added to Wiltech's cost will be small. The substantial difference between the two proposals will remain."

Under the circumstances, we do not see how the practice that MSI complains of tainted the selection of Wiltech.

Finally, NASA reports the costs of the transition from MSI to Wiltech in fact were considered in the cost evaluation. The evaluation documents confirm this, and we thus find no merit to MSI's allegation on the matter.

#### MSI's cost proposal

MSI complains that its cost proposal was evaluated improperly in two respects. First, MSI states that despite the fact that during negotiations the firm allegedly substantiated a proposed reduction of two positions from the number it used as the incumbent, NASA added the two positions back into the proposal at a cost of \$48,000. Second, MSI complains that NASA adjusted the firm's cost proposal by increasing the group insurance rate for the first, and the only priced, option year, despite assurance from MSI's carrier that there would be no actual increase in insurance premiums. Offers were solicited for a one-year period, one priced option year, and two unpriced option years.

The proposed reduction of two employees involved the consolidation of sampling operations at the Cape Canaveral Air Force Station with those at the Kennedy Space Center. The evaluation documents show that the source evaluation board, after thorough consideration including consultation with the Air Force, concluded that the proposed consolidation "would not be cost or operationally effective" despite MSI's attempt to justify the proposal. As a result, the cost of the two positions that would have been eliminated was added to MSI's proposed staffing cost. MSI's mere disagreement with NASA's position does not in itself render that position unreasonable.

We also conclude that there is no merit to MSI's complaint concerning NASA's upward adjustment to its second year insurance costs. NASA notes that the carrier's "assurance" that the premiums would not increase is in a mailgram furnished by MSI long after the source evaluation board's evaluation of proposals and the SSO's selection of Wiltech for further negotiations. NASA states that, in any event, the carrier's statement merely is that the

carrier "anticipates" no change. NASA asserts that the board therefore simply adjusted both offerors' costs based on the agency's actual experience at the Kennedy Space Center in the previous two years, and points out that the amounts of the adjustments were insignificant compared to the difference in the overall costs proposed. Under the circumstances, we see no basis to object to the adjustment.

MSI's proposed fee structure

The RFP contemplated a cost plus award fee contract. "Fee Structure" was a subfactor of the Technical factor "Management Techniques." The subfactor explained that the use of an award fee was intended to motivate the contractor to manage effectively, control costs, and use innovative techniques to improve performance. The RFP emphasized that NASA planned to use the award fee provision as a primary management tool in providing incentive for high levels of performance. It further stated:

"KSC's [The Kennedy Space Center] award fee approach is to stress technical performance and business management \* \* \*. KSC's award fee philosophy is for a minimal base fee. The award fee potential should then be of a sufficient amount to reward the contractor through all levels of performance. \* \* \* You are to propose and explain your rationale for the amount of base (fixed) and award fee you expect to receive for this effort. Substantiate how this plan will provide incentives to obtain high productivity, meet turnaround requirements, and provide a high level of quality while realizing cost efficiencies for the Government."

Offerors were further advised that the award fee mechanism and supporting rationale would be significant in proposal evaluation.

Attached to the RFP was an award fee evaluation plan that "exemplifies" the approach suitable to the procurement. Under that plan, the contractor would receive



95-100 percent of the maximum available award fee for "superior" performance; 75-95 percent for "excellent"; 50-75 percent for "very good"; 25-50 percent for "good"; 5-25 percent for "acceptable." The contract would be subject to termination if the contractor's performance was "unacceptable." The adjective rating would be based on a numerical score resulting from evaluation of the contractor's performance. For example, a score of 95-100 points would yield a "superior" rating; a score of 90-94.9 points, an "excellent" rating.

The source evaluation board found a number of weaknesses in MSI's proposed fee structure. MSI proposed to establish a pool of \$54,000 from the available fee, which it would distribute to its employees in the form of incentive payments if an "excellent" or "superior" rating was attained. The board viewed this arrangement as a corporate disincentive to performance at better than a "very good" level--85 to 89.9 points--since "very good" performance would allow the corporation to keep the \$54,000 in the pool instead of distributing it to the employees.

Also, under MSI's proposal the firm would earn more than one-half of the available fee for minimally "acceptable" performance (75 points). As discussed above, the award fee plan that NASA included with the RFP reflected NASA's view that such performance should lead to an award of only five percent of the available fee. The source evaluation board concluded that MSI's proposal was unacceptable in this respect.

MSI complains that NASA misunderstood the allegedly significant incentive to its key employees that would result from MSI's pooling proposal. MSI states:

"\* \* \* Management personnel at MSI would have discretionary authority to utilize this pool to reward employees in the event of either 'excellent' or 'superior' performance ratings, with more generous incentive payments being made in the case of higher rating.\* \* \*"

Also, MSI asserts that its approach to the award fee was justified by the "increased risk factors" in this contract as opposed to the prior contract.

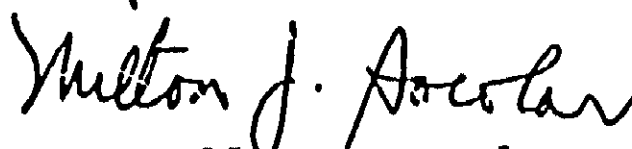
It is the evaluators' function, not this Office's, to determine the relative merits of technical proposals, and they have considerable discretion in making that determination. Therefore, we will not question an agency's evaluation unless the protester shows the agency's judgment lacked a reasonable basis, was an abuse of discretion, or otherwise violated procurement statutes or regulations. Alan-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263.

Our review of the record shows that NASA indeed appreciated the aspects of MSI's employee-incentive arrangement noted by the protester, notwithstanding MSI's complaint to the contrary, but simply found it unacceptable for the reasons stated, that is, the corporate disincentive inherent in it. MSI has provided no basis to question NASA's concern either in that regard or with respect to the difference between MSI's proposed award fee schedule and that reflected in the RFP attachment.

Proposal preparation costs

MSI claims proposal preparation costs on the basis that but for NASA's allegedly arbitrary, capricious and prejudicial actions, MSI would have had a substantial chance of being awarded to contract in issue. In view of our conclusion with respect to the merits of the protest, however, the claim is denied. See Allied Sales & Engineering, Inc., B-203913, B-204102, January 8, 1982, 82-1 CPD 23.

The protest is denied.

  
Acting Comptroller General  
of the United States